1288.

SUPREME COURT OF THE UNITED STATES.

No. 146.

PETER J. BURCHELL, APPELLANT,

vs.

ALBERT C. MARSH, ALEXANDER FREAR AND WILLIAM M. ARBUCKLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF ILLINOIS.

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GIDEON, print.

1289.

Pleas before the judges of the circuit court of the United States of America, in and for the district of Illinois, on the chancery side thereof, at the city of Chicago, in the State and district of Illinois, of the April term, in the year of our Lord one thousand eight hundred and fifty-three, and of our independence the seventy-seventh.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America.

[SEAL.]

WILLIAM POPE, *Clerk*.

UNITED STATES OF AMERICA,
District of Illinois, ss.

Be it remembered, that heretofore, to wit, on the sixteenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, Steward C. Marsh, Alexander Frear and William M. Arbuckle, by Henry Frink their solicitor, filed in the clerk's office of said court, at the city of Chicago in said district, a bill of complaint against Peter J. Burchell, in the words following, that is to say:

UNITED STATES OF AMERICA.

Circuit court of the United States, for the district of Illinois, in chancery sitting.

To the judges of the circuit court of the United States, for the district of Illinois.

Stewart C. Marsh, Alexander Freer and William M. Arbuckle, of the city of New York, who are citizens of the State of New York, bring this their bill against Peter J. Burchell, of St. Charles, in Kane county, who is a citizen of the State of Illinois, and thereupon your orators complain and say, that on or about the second day of May, in the year one thousand eight hundred and forty-nine, said Burchell became indebted unto your orators, Stewart C. Marsh and Alexander Freer, (then composing the firm of Marsh and Freer,) in the sum of nine hundred and twenty-one dollars and forty-nine cents, for the price and value of goods, wares and merchandise; and on the eleventh day of September, in said year, the said Burchell became further indebted unto said firm of Marsh and Freer for goods and merchandise in the sum of one thousand two hundred and eighty dollars and ninety cents, upon which said indebtedness the said Burchell was to have a credit, as your orators are informed by R. V. M. Cross, their agent, who made said sale, and as they believe to be true.

And your orators further show unto your honors, that the said Peter J. Burchell, on the third day of July, in the year one thousand eight hundred and fifty, purchased of said firm of Marsh and Freer goods and merchandise to the amount of two thousand one hundred and nine-

teen dollars and sixty-five cents, on a credit for the term of six months; and also on the same date, the said Burchell purchased a bill of goods from said firm to the amount of one hundred and seventy-three dollars and seventy-five cents upon cash terms, which should bear interest from the date of said purchase.

And your orators further show unto your honors, that the said Peter J. Burchell has from time to time paid to your orators, Stewart C. Marsh and Alexander Freer, personally or through the hands of Ralph V. M. Cross, their agent, sums of money and other means sufficient to pay the amount of the two first-mentioned bills of goods herein before stated, at the sum of nine hundred and twenty-one dollars and forty-nine cents, and one thousand two hundred and eight dollars and ninety-one cents, with the interest that had accrued thereon.

And your orators further show unto your honors, that the said Burchell purchased from said firm of Marsh and Freer, on the twenty-eighth day of October, in the year one thousand eight hundred and fifty, goods and merchandise to the amount of three thousand two hundred and forty-six dollars and ten cents in value, upon a credit of nine, twelve and eighteen months, to be paid in such proportions as should make the term of credit average one year with interest, to be paid on the whole amount of said purchase after six months.

And your orators further show unto your honors, that sometime in the last part of the month of October, in the year eighteen hundred and fifty-one, the said Burchell paid to your orators, Marsh and Freer, the sum of one thousand dollars on account of said indebtedness.

And your orators further show unto your honors, that the said Stewart C. Marsh and Alexander Freer, not having received payment from the said Burchell of the balance of the moneys due them for said goods and merchandise, commenced a suit in the month of March, eighteen hundred and fifty-two, by summons in the circuit court of the United States for the district of Illinois, against the said Burchell, which said summons was sued out by Ralph V. M. Cross, their agent, residing at Chicago, in the State of Illinois, and was returnable on the first day of the then next term of said court, to be held at Chicago in the month of April next thereafter.

And your orators, Marsh and Freer, by their attorney, filed their declaration in said court, counting therein upon said indebtedness for goods and merchandise so as aforesaid sold to said Burchell, and the said Burchell appeared in said action by his attorney, and filed a plea at the last April term of said court at Chicago, and also filed an affidavit alleging in substance, that your orator, Alexander Freer, in the month of October, eighteen hundred and fifty-one, made an agreement with him, by the terms of which said indebtedness was not to become due until the month of April, eighteen hundred and fifty-two, and asking a continuance of said cause to enable him to procure the attendance or evidence of one Dickinson and Hopkins, by whom said Burchell alleged, in and by said affidavit, he could prove said agreement; and

your orators, by their attorney, submitted to a nonsuit and discontinued said suit, rather than have the same continued.

And your orators further show unto your honors, that sometime in the month of May or June thereafter, their agent, Ralph V. M. Cross, sued out of the circuit court of the United States for the district of Illinois a writ of capias ad respondendum, in which your orators, Stewart C. Marsh and Alexander Freer, were plaintiffs against the said Peter J. Burchell as defendant, to recover the said indebtedness, which writ was made returnable on the first day of the next term of said court, to be held at Springfield, in the district of Illinois, in the month of July then next, upon which a deputy marshal of said district arrested the said Burchell soon after the issuing of said writ, and the said Burchell gave bail for his appearance to answer the said writ in the sum required by an order endorsed upon said capias by the clerk who issued the same, being in the sum of twelve thousand dollars or about that sum, and was released from custody.

And your orators, Marsh and Freer, prior to the July term of said court, filed their declaration in the suit so commenced with the clerk of said court at Springfield, founded and counting upon the same indebtedness before stated; and the said Burchell appeared and pleaded in the action so commenced, and filed an affidavit for a continuance, alleging therein and thereby that such indebtedness was not to become due until the tenth day of June next after the suing out of said writ, by the terms of an agreement between him and your orator, Alexander Freer, which the said Burchill alleged in and by said affidavit he could prove by certain persons, as your orators are informed and believe, by said Dickinson and Hopkins, who were stated to be now residents of this State; and said cause was thereupon continued.

And your orators further show unto your honors, that the said Peter J. Burchill became indebted unto your orators, Alexander Freer and William M. Arbucle, (doing business at New York under the name and firm of Alexander Freer & Co.,) in the sum of one thousand and thirteen dollars or upwards, for the value of goods and merchandise sold and delivered to him by said firm, on or about the eighteenth day of October, in the year one thousand eight hundred and fifty-one, at New York, upon a credit, as your orators remember and believe, for the term of six months; and the said sum not having been paid, your orator's agent, Ralph V. M. Cross, sued out of the circuit court of the United States, for the district of Illinois, sometime in the month of May or June last, a writ of capias ad respondendum, in which writ your orators, Alexander Freer and William M. Arbucle, were plaintiffs, and the said Burchill defendant, and the said writ was sued out as the commencement of suit, for the recovery of the indebtedness last named, and was made returnable on the first day of the next term of said court, to be held at Springfield, in said district, in the month of July, eighteen hundred and fifty-two; and the said Burchill was arrested upon said writ soon after the same was issued, by a deputy marshal for the district of Illinois, and said Burchill gave bail upon

said capias in the amount endorsed on said writ by the clerk who issued the same, and was released from custody; and your orators further show that a declaration was filed by the plaintiffs in said writ against the defendant therein, prior to the return day thereof, counting upon the indebtedness for the said goods and merchandise, and the said Burchell appeared and pleaded to the said declaration, and also filed an affidavit, stating in substance, that he purchased said goods and merchandise under an agreement on the part of your orators, composing the said firm of Alexander Freer & Co., that the term of credit should be one year, and that the indebtedness was not due; and stating further that he could prove such agreement by one Dickinson and Hopkins, non-residents of this State; upon which affidavit said cause was continued, as your orators are informed and believe.

And your orators further show unto your honors, that on or about the fifteenth day of December, eighteen hundred and fifty-two, they entered into a written agreement (executed by them on the their part by Henry Frink, their attorney in fact) with the said Peter J. Burchell, executed by him in person, submitting the matter at issue in said suit to the arbitrament and award of F. B. Mosley, of Chicago, and Oliver M. Butler, of St. Charles, in Kane county, in the State of Illinois, and such other person as said Mosley and Butler should select, which said agreement of submission is in the words and figures following, to wit: Whereas certain controversies and disputes have arisen, and are now pending and unsettled, between Stewart C. Marsh and Alexander Freer (the firm of Marsh and Freer) and Peter J. Burchell, also between Alexander Freer and William M. Arbuckle (the firm of A. Freer & Co.) and Peter J. Burchell, which controversies are of the nature as follows: the said Marsh and Freer and the said Alexander Freer & Co. have severally brought suits against the said Burchell by capias in the U. S. circuit court for Illinois, to recover certain indebtedness which they allege the said Burchell is owing to said firms respectively, and the said Burchell claims to have sustained damages by reason of having been sued by said firms as aforesaid, and by reason of the doings of the said firms towards him. Now, therefore, in consideration of the premises, and to put an end to all further controversies, and for a full and final adjustment of all differences between them, this article of submission, made and entered into this 15th day of December, A. D. 1852, between Alexander Freer, William M. Arbuckle and Stewart C. Marsh, of the one part, and Peter J. Burchell, of the other part, witnesseth: that the said parties have agreed to and do hereby submit all demands, suits, claims, causes of action, controversies and disputes between them to the arbitrament, determination and award of F. B. Mosley, Oliver M. Butler, and such other person as the said Mosley and Butler may select, who are within sixty days from the day of the date hereof, and on such day as they or a majority of them shall select, meet at St. Charles, Kane county, (of the time of which meeting notice shall be given to the said parties or their attorneys,) and the said arbitrators shall hear all matters of claim of either party upon or

against the other founded in law or equity. And the said arbitrators shall hear the proofs of the parties appertaining to the matters submitted, and, after having heard the proofs within the time aforesaid, shall make their award, which being made by them, or by a majority of them, shall be binding upon the parties; the said award shall direct and determine what, if anything, is due or owing from said Burchell to the firm of Marsh and Freer, (composed of Stewart C. Marsh and Alexander Freer,) and also what, if anything, is due from the said Peter J. Burchell to the firm of Alexander Freer & Co., (firm composed of Alex. Freer and William M. Arbuckle above named,) or what, if anything, shall be due from either or both of said firms to the said Peter J. Burchell, and shall award the manner and time of payment of any such indebtedness, which said award shall be made in writing within seventy days from the date hereof; and a copy thereof signed by said arbitrators, or a majority of them, shall be delivered to each of said parties or their attorneys within the time last aforesaid; and it is hereby agreed that the parties to this submission shall, within twenty days from the date thereof, each by himself or his attorney duly authorized, execute to the other a bond in the penal sum of at least ten thousand dollars, with security to be approved by a majority of said arbitrators, conditioned that the said parties shall abide by and perform the award to be made by said arbitrators. And it is further agreed, that upon the execution of said bond and approval thereof as aforesaid, all suits now pending between said parties shall be dismissed by operation of this submission. That in case of the non-execution of said bonds with security by the parties as aforesaid, then this agreement shall be void.

In witness whereof said parties have hereunto set their hands, this 15th day of December, A. D. 1852.

STEWART C. MARSH,
By H. Frink, his attorney.
ALEXANDER FREER,
By H. Frink, his attorney.
WILLIAM M. ARBUCLE,
By H. Frink, his attorney.
P. J. BURCHILL, [SEAL.]

And your orators further show unto your honors, that the said Mosley & Butler selected William C. Kimball, of Elgin, in said county of Kane, as the third arbitrator; and the said arbitrators so selected, in pursuance of said submission, having first given notice to the said Burchill and to Henry Frink, the attorney of your orators, of the time and place of meeting, to hear the parties in reference to the matters submitted to them, assembled and organized at St. Charles, in Kane county aforesaid, on Thursday, the third day of February, eighteen hundred and fifty-three, and then and there proceeded to hear the proofs of the parties to said submission.

Amount proved as purchased of Marsh & Freer.

And your orators then and there proved that the said Peter J. Burchill had purchased from your orators, Alexander Freer and Stewart C. Marsh, (composing the firm doing business under the name and style of Marsh & Freer,) the several bills of goods and merchandise, and at the several times and to the amount in value herein before stated and set forth, abating therefrom the sum of twenty dollars for an error; and the bills of the several purchases of goods and merchandise were then and there produced, corresponding in date and amount with the times and sums before in this your orators' bill stated, and were admitted by the said Burchill to be correct.

Payments to Marsh & Freer, as proved.

The several payments that had been made by said Burchill to the firm of Marsh & Freer were also proved, stated and admitted by the attorney of your orators and by said Burchill; but the several payments and the separate amounts thereof, your orators have not the means of stating in detail. Your orators show that it was proved that sufficient had been paid to satisfy the two first items of indebtedness contracted in May and September, eighteen hundred and forty-nine, with the interest thereon, as was then and there found; and also that the sum of one thousand dollars was proved, found and conceded to have been paid to said firm of Marsh & Freer, on or about the eighteenth day of October, eighteen hundred and fifty-one, towards the paying the indebtedness of said Burchill, for merchandise purchased on the third day of July and the twenty-eighth day of October, in the year eighteen hundred and fifty, and which was all the payment claimed by the said Burchill to have been made; and it was then and there proved and conceded by the parties, that the balance remaining unpaid and due to said firm of Marsh & Freer from said Burchill was the sum of four thousand nine hundred and thirty dollars and upwards, including principal and interest; the principal being four thousand five hundred and thirty-nine dollars and fifty cents; and the interest the sum of three hundred and ninety-one dollars and upwards. And your orators further show unto your honor, that it was then and there proved on their behalf, and was admitted by the said Burchill, that he purchased from the firm of Alexander Freer & Co., (which said firm is composed of your orators, Alexander Freer and William M. Arbuckle,) goods and merchandise to the amount of one thousand and thirteen dollars and upwards, on or about the eighteenth day of October, in the year eighteen hundred and fifty-one; and the said Burchill produced his bill of goods purchased of said last named firm, as made out at the time of such purchase at New York, which corresponded in amount with the sum last stated; and it was proved and admitted, that the amount due from said Burchill to said firm of Freer & Co., including interest, was the sum of one thousand and sixty-six dollars and upwards, no part of which had been paid.

And your orators further show unto your honors, that said Burchill, by his attorney, claimed to the arbitrators that he had been maliciously sued; first, by said firm of Marsh & Freer, by and through Ralph V. M. Cross, their agent, before their demand was due; and, secondly, by both of said firms in the suits commenced by writs of capias, as hereinbefore set forth. Said Burchill proved by one Dickinson, that he was present at a conversation between said Burchill and Alexander Freer, one of your orators, at the store of the latter, in New York; and that said Burchill, in conversation in reference to purchasing a bill of goods, stated, that he could buy goods on a credit of one year, and that there was no use of purchasing on a less term of credit, thinking to pay for the goods from their proceeds; and also, that he could not pay the old account until the next spring; and in reply to an inquiry of your orator, Alexander Freer, at what time in the spring he could pay, said Burchill said, perhaps in April or June or July, but would pay as soon as July, 1852, and that said Freer remarked that money would come as good then as ever; and said Burchill left, saying that he would call and select the bill of goods; and said Burchill proved by one Gorton that he was present at said conversation, and that said Freer agreed to extend the time for paying the old indebtedness until said Burchill should go to New York in the spring, which was to be as soon as July, 1852; and that said Freer said he would sell said Burchill a bill of goods on credit of one year, but the witness did not see any goods sold by your orator, Freer, to said Burchill. And said Burchill proved the commencement of said suit in behalf of your orators, Marsh & Freer, in the month of March, A. D. 1852, and that the plaintiffs submitted to a nonsuit by a certified copy of the record of said court, and also proved the issuing out of said writ of capias, the arrest of said Burchill, and that he gave bail thereon in one case—that in which your orators, Marsh & Freer, were the plaintiffs, in the sum of twelve thousand dollars, or about that sum; and in the other case in which your orators, Freer and Arbucle, were plaintiffs, your orators cannot state, from present recollection, the amount in which bail was given; which facts were proved by the admission of your orators' attorney before said arbitrators; and the said Burchill further proved, that Ralph V. M. Cross was acting as the agent of your orators, and that the said Burchill was engaged in the business of a retail country merchant, having a store at St. Charles, in Kane county, and another store at Cherry Valley, in Winnebago county, in the State of Illinois, and was doing a good and profitable business at the time he was arrested and sued as aforesaid; that he owed the sum of about nine thousand dollars only, and had property and assets in good accounts, to the amount of two thousand dollars; notes, bonds and mortgages, to the amount of thirteen thousand dollars; goods and merchandise, to the amount of six thousand dollars; besides real estate, consisting of a farm and an undivided half of a brick store and lot at St. Charles; and that before the commencement of said suit, in a conversation with your orators' agent, Ralph V. M. Cross, about the indebtedness from him to your orators, said Burchill

claimed that the same was not then due, and proposed to give security to said Cross for the payment of said debts, when he claimed they would become due, five dollars for one, or security in five times the amount of said indebtedness; which offer was accompanied with a remark made by said Burchill, that he believed the said Cross intended to sue him, and if he did so, it should not be because of any fear of losing the debt; which evidence was objected to by your orators' attorney, and was received by said arbitrators, subject to the objection so made. And your orators further show, that the said Burchill then offered the evidence of several witnesses to show, that the said Cross had slandered him in a manner to injure his credit and business, and did prove, subject to an objection made thereto by your orators' attorney, by several witnesses, in substance, that the said Cross had said on the occasion of the arrest of said Burchill upon the writs of capias, as herein before stated, that he had learned that a defendant arrested upon a ca. sa. from the circuit court of the United States for this district could not discharge himself from such arrest, by applying to the probate court of this State, and making a schedule of his creditors, his property, and by making an assignment, and that he would have said Burchill in jail if he did not pay your orators, and that he would have to remain in jail until the debts were paid; and said Burchill also proved before said arbitrators, subject to like objection made by your orators' attorney, that said Cross had stated that said Burchill would fail and was not able to pay his debts, or statements to that effect; and also that said Burchill had sworn falsely or committed forgery in swearing to the affidavits made by him to procure a continuance of said suits as hereinbefore stated and set forth, which was proved by three or four witnesses. And your orators further show, that said Burchill further proved, subject to like objection by your orators' attorney, that said Burchill was a good and careful manager of his business; and in the opinion of three or four witnesses, who were sworn before said arbitrators, that said Burchill, in giving credit in his business, made very few bad debts; and by four or five witnesses, that they should think, judging from the evidence that they had heard given before said arbitrators, that said Burchill had sustained damage by reason of being sued as aforesaid, and by the statements of said Cross, in injury to his business and credit, to the amount of ten thousand dollars; and one or two witnesses swore, that they thought the damages would amount to fifteen thousand dollars; all of which evidence was objected to by your orators' attorney. And your orators further show, that their attorney then read a certified copy of the affidavit of said Burchill, made at the April term of the circuit court of the United States, for the district of Illinois, to procure a continuance of the suit of your orators, Marsh & Freer, against him, in which he swore that said indebtedness was not due until the month of April, 1852; and the said Burchill then proved, by J. F. Farnsworth, that he was employed as attorney by said Burchill, to appear and defend said suit; and that said Burchill stated to his said attorney, when instructing him to draw such affidavit, that he was to

pay the debt of your orators, Marsh & Freer, by agreement, when he should go to New York in the spring of 1852, possibly in April, but certainly as soon as the month of July, in said year; and that his attorney, J. F. Farnsworth, stated to him that it would be sufficient and answer the purpose of continuing said suit, as well to swear that the said debt was not to become due until April, as to swear that it was not to become due until July, and hence so wrote the affidavit. Said Burchill also proved that he employed said Farnsworth to defend said suits commenced by capias as aforesaid, and that his attorney went from St. Charles, in Kane county, to Springfield, in the State of Illinois, and attended the July term of the circuit court of the United States, for the district of Illinois, and filed affidavits and procured the continuance of said suits.

And your orators further show unto your honors, that said Burchill proved an agreement in writing signed by himself and by your orator, Alexander Freer, dated sometime in the month of October or November last, submitting the same matters between the firms of Marsh & Freer and Alexander Freer & Co. and said Burchill, to three arbitrators, and that he, the said Burchill, procured his witnesses and was ready to proceed to the arbitration of said matters on the day and at the place for that purpose appointed, when said submission was revoked by the attorney in fact of your orators.

And your orators further show unto your honor, that the foregoing is in substance all the evidence and proof adduced and made before said arbitrators, and that the matters referred to in said agreement were then submitted to said arbitrators for their decision; your orators by their attorney contending that the said Burchill had not shown any grounds or facts entitling him to damages from your orators, or any abatement from the amount of your orators' demands; that even if said arbitrators should believe that the said Cross had slandered said Burchill or treated him with malice, your orators were not answerable therefor in damages; and your orators' attorney requested the said arbitrators (inasmuch as a proper determination and award was important to the parties interested therein) to seek competent legal advice as to the rule that should govern them in making their awards; and that said Burchill by his attorney insisted to said arbitrators that he had sustained injury in his credit, business and reputation by the conduct of your orators' agent, and was entitled to larger damages.

And your orators further show unto your honor, that Oliver M. Butler and William C. Kimball, two of the arbitrators chosen as aforesaid, on Friday the fourth day of February, in the year eighteen hundred and fifty-three, at St. Charles, made and published their award and delivered a copy thereof to your orators' attorney at Chicago, in and by which they did award and direct as follows: "First, that all claims, demands, controversies and disputes between the respective parties, or between the said Burchill and the firm of Marsh & Freer, and also between the firm of Alexander Freer & Co. and the said Burchill, should cease and be determined by the said award. Second, that as

between your orators, Stewart C. Marsh and Alexander Freer (the firm of Marsh & Freer) and the said Burchill, that there was due from said firm of Marsh & Freer to the said Peter J. Burchill the sum of one hundred dollars, which said sum they did direct that the said Marsh & Freer should pay in money to the said Peter J. Burchill in one month from the date of said award. Third, as between your orators, Alexander Freer and William M. Arbucle, (the firm of Alexander Freer & Co.,) that there was due from said firm of Alexander Freer & Co. to said Burchill the sum of twenty-five dollars, which said sum they did direct that your orators, Alexander Freer and William M. Arbucle, should pay in money to said Burchill in one month from the date of the said award. Fourth, that the costs of said arbitration should be paid as follows: That your orators should pay all the costs which they had made or occasioned, and should also pay the said Burchill his costs expended in and about said arbitration; which said award was signed by said Kimball and Butler under their seals, but said Mosley refused to sign said award on account of the injustice it would work.

Your orators further show, that they are totally unable to state the reason upon which the arbitrators who made said awards made such a distinction as to attempt to defraud the firm of Marsh & Freer out of the sum of over five thousand dollars by their awards, while they seek to take only about eleven hundred dollars from the firm of Alexander Freer & Co., unless because their just demands happened to be that much larger.

And your orators further show unto your honor, that there was not the slightest evidence given or proof of any kind made before said arbitrators, tending to show your orators individually or either of said firms ever was indebted to said Burchill in any sum whatever, and the said Butler & Kimball in making said awards concluded, as your orators are informed and believe, that your orators had manifested too much anxiety to collect their debts, and as a punishment for such anxiety made the award before mentioned and set forth.

And your orators expressly deny that said arbitrators had any power or authority to inquire of or hear proofs concerning any malicious conduct of the said Ralph V. M. Cross, or any statements claimed to have been made by him slandering the said Burchill in his business or credit.

And your orators charge, the said arbitrators had no power or authority to award upon any such matters, and that the said award is unjust, inasmuch as your orators never owed or were indebted to said Burchill in a single cent, in fact or by any proof made before said arbitrators, and charge that the said award was made either from improper and corrupt motives, with the design of favoring said Burchill, or in their ignorance of the rights of the parties to said submission, and of the duties and powers of the arbitrators who signed the said award.

And your orators respectfully submit to your honor, that under and by the terms of said submission the said arbitrators could not, in law or upon any principle of equity, find damages against your orators (even if their demands in the belief of such arbitrators had not been due at

the time of the commencement of said suit) for anything above the actual costs and expenses necessarily incurred by the said Burchill in defending such suits; but your orators show that it was not proved before said arbitrators what amount if any such damages were sustained in making such defence. And your orators charge, the said Burchill did not prove before said arbitrators that said firm of Marsh & Freer had upon any consideration even agreed to extend the time for the payment of their demand by said Burchill, and that the substance of all the evidence on that subject is hereinbefore stated by your orators, and that no witness sworn before said arbitrators pretended to have been present when the firm of Alexander Freer & Co. sold the bill of goods and merchandise to said Burchill in October, eighteen hundred and fifty-one. And your orators well hoped that the said Burchill would not attempt to claim any right or benefit from said award, but would consent that the same should be renounced by the parties as unjust and oppressive. But now so it is, may it please your honors, that the said Burchill wrongfully (as your orators claim) intends to enforce said award, and thus defraud your orators out of the full amount of their just demands, together with the sums of money falsely and corruptly found by said Butler & Kimball to be due and owing from your orators to said Burchill, with all the costs of said arbitration, which costs your orators deny the power of the arbitrators to award. In consideration whereof, and forasmuch as your orators have no remedy at and by the strict rules of common law, and cannot with safety proceed to collect their demands aforesaid without the aid of this honorable court; to the end thereof that the said Peter J. Burchill may, if he can, show why your orators should not have the relief hereby prayed, and may according to his best and utmost knowledge, information and belief, full, true, direct and perfect answer make to all and singular the matters in this your orators' bill of complaint stated and charged, without oath, (his answer upon oath being hereby expressly waived,) and that as fully as if the same matters were here repeated, and he, the said Burchill, especially interrogated thereto; and that the said Peter J. Burchill may be restrained by the order of this honorable court from assigning or attempting to collect said award, or any moneys or costs thereby awarded, against your orators or said firms of Marsh and Freer and Alexander Freer & Co., and from sueing, counting upon, or in any manner pleading said award in any suit or proceeding at law between said Burchill and your orators, or the firms aforesaid, and that the said award may be declared to be fraudulent and void as against your orators and as between the parties to said submission, and as such set aside, vacated and annulled by the final order and decree of this court, and that your orators may have such other and such further relief in the premises as shall be agreeable to equity and good conscience.

May it please your honors, the premises being considered, to grant unto your orators the people's writ of injunction, to be issued out of and under the seal of this court, and directed to the said Peter J. Burchill, his agents, attorneys, solicitors and counsel, therein and there-

by commanding him and them, under a certain penalty to be therein inserted, that they, and each of them, absolutely refrain and desist from assigning said award and from attempting to collect from your orators, Marsh & Freer, and from your orators, Freer and Arbuclé, any sum of money or costs awarded against them, to be paid to said Burchill by the said arbitrators in and by said award; and also from sueing, counting upon, or in any manner pleading the said award in any suit or proceeding at law between your orators, composing the firm of Marsh & Freer, and the firm of Alexander Freer & Co. and the said Burchill.

May it also please your honors, that the premises being considered, to grant unto your orators also the people's writ of subpœna, to be issued out of and under the seal of this court, and directed to the said Peter J. Burchill, and therein and thereby commanding him to be and appear before this honorable court, at Chicago, on a certain day to be therein named, then and there to answer unto your orators' bill of complaint, and to stand to and abide by such decree as this honorable court shall make in the premises, and as shall be agreeable to equity and good conscience.

STEWART C. MARSH,
ALEXANDER FREER,
WILLIAM M. ARBUCKLE,
By HENRY FRINK,
Their attorney in fact.

HENRY FRINK, *Sol.*
And of counsel for complainants.

UNITED STATES OF AMERICA,
District of Illinois, ss.

Henry Frink, of Chicago, in the district of Illinois, being by me duly sworn, upon his oath says, he is the attorney in fact for the complainants in the foregoing bill of complaint named, and is also their solicitor; that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believed it to be. And further, that he has better knowledge of the material facts stated in said bill than the complainants, and that they are not now in the State of Illinois.

HENRY FRINK.

Subscribed and sworn to before me, February 15th, 1853.
GEO. W. MEEKER,
U. S. commissioner, dist. of Illinois.

UNITED STATES OF AMERICA,
State and district of Illinois.

William M. Van Brunt, being duly sworn, deposes and says, that he served a true and correct copy of the bill in chancery to which this

affidavit is attached, on Peter J. Burchill, the defendant, in said bill at St. Charles, in said State and district, on the seventeenth day of February, A. D. 1853, to which copy of said bill was appended a notice directed to the defendant, informing him that on the first Wednesday of March thereafter, application would be made to the Hon. Thomas Drummond, district judge of the United States of America, for the district of Illinois, for an injunction upon said bill at his chambers, in the city of Galena, in said State and district. Chicago, Feb'y 22, 1853.

W. M. VAN BRUNT.

Subscribed and sworn to, this 22d Feb'y, 1853, before me,

GEO. W. MEEKER,
U. S. com'r, dist. Ills.

Whereupon there issued out of the clerk's office aforesaid, under the seal of said court, the process of subpœna in the words following, that is to say:

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
District of Illinois, ss.

The United States of America, to Peter J. Burchill.

We command you that you appear before our judges of our circuit court of the United States of America, for the district of Illinois, at Chicago, in said district, on the first Monday of April next, to answer the bill of Stewart C. Marsh, Alexander Frear, and William M. Arbuckle, this day filed in the clerk's office of said court in the city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made and pronounced, upon pain of judgment being pronouced against you by default. Witness the Hon. Roger B. Taney, chief justice of the United States of America, at Chicago aforesaid, this sixteenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, and of our independence the seventy-seventh.

WM. POPE, *Clk.*

Memorandum.—The above named defendant is required to enter his appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, otherwise a decree will be taken pro confesso; upon which the marshal endorsed in the words following, that is to say: I hereby authorize and empower William M. Van Brunt my special deputy, to execute the within writ, this sixteenth day of February, A. D. 1853.

BEN. BOND, *U. S. marshal, dist. Ills.*

And the said special deputy returned the said subpœna into the clerk's office of said court, on the nineteenth day of February, eighteen hundred and fifty-three, with the following return endorsed thereon, that is to say:

UNITED STATES OF AMERICA,
State and district of Illinois, ss.

I do hereby certify, that on the sixteenth day of February, A. D. 1853, I served a copy of the within subpœna, and also a copy of the bill filed in this cause, on the defendant, Peter J. Burchill, at St. Charles, in the State and district aforesaid. Feb'y 19, 1853.

BEN. BOND, *U. S. marshal dist. Ills.*
By W. M. VAN BRUNT, *Special deputy.*

And on the tenth day of March, eighteen hundred and fifty-three, the Hon. Thomas Drummond, United States district judge, for the district of Illinois, filed in the clerk's office of said court, at Chicago, an order attached to the bill filed herein, in the following words, that is to say:

CIRCUIT COURT OF THE UNITED STATES,
District of Illinois.

April term, 1853.

STEWART C. MARSH, Alexander Freer, and William M. Arbuckle,
vs.
PETER J. BURCHILL.

The clerk will issue a writ of injunction, enjoining and commanding the said Peter J. Burchill, his agents or attorneys, not to assign or in any way transfer, directly or indirectly, the said award referred to in the above bill, to any person or persons, or otherwise, howsoever; and also enjoining and commanding the said Peter J. Burchill, his agents or attorneys, not to attempt to collect by suit, or otherwise, the said amount or the costs thereof, until the order of the circuit court shall be made known in the premises, at the next term thereof, to be held in Chicago.

Galena, March 3d, 1853. THOMAS DRUMMOND.

And thereupon there issued from the clerk's office of said court, at Chicago, an injunction, in the words following, that is to say:

THE UNITED STATES OF AMERICA.

Circuit court of the United States, for the district of Illinois.

In chancery.

The United States of America, to Peter J. Burchill, and to his counsellors, attorneys, solicitors and agents:

Whereas it has been represented unto our judges of the circuit court of the United States, for the district of Illinois, in chancery sitting, on the part of Stewart C. Marsh, Alexander Frear and William M. Arbuckle, complainants, that they have exhibited their bill of complaint

in our said circuit court of the United States, for the district of Illinois, in chancery sitting, before the judges thereof, at chambers, against you, the said Peter J. Burchill, defendant, to be relieved touching the matters therein stated, in which said bill it is alleged, among other things, that you are combining with others to injure the said complainants touching the matters therein complained against you, and that your actings and doings are contrary to equity and good conscience, and tend to injure the said complainants: we, therefore, in consideration of the premises and of the particular matters in said bill stated and charged, do strictly command and enjoin you, the said Peter J. Burchill and the persons before named, (under the penalty of ten thousand dollars, to be levied of your lands and tenements, goods and chattels, to our use,) that you and each of you do absolutely refrain and desist from assigning, or in any way transferring, directly or indirectly, to any person or persons howsoever, a certain award made and published by Oliver M. Butler and William C. Kimball, dated the fourth day of February, A. D. 1853, as between the complainants, Stewart C. Marsh and Alexander Frear, (composing the firm of Marsh & Frear,) and you, the said Peter J. Burchill, and as between Alexander Frear and William M. Arbuckle, (composing the firm of Alexander Frear & Co.,) and you, the said Peter J. Burchill; which said award was made by the said Butler and Kimball, two of the arbitrators selected and chosen under and in pursuance of an article of submission, dated the 15th day of December, A. D. 1852, and executed by you, the said Peter J. Burchill, of the one part, and by Stewart C. Marsh, Alexander Frear and William M. Arbuckle, the said complainants, by Henry Frink, their attorney in fact, of the other part; and also that you absolutely refrain and desist from any attempt to collect or enforce the said award, or any costs thereof, as against the said complainants, or either of them, and this until the further order of our said circuit court of the United States, for the district of Illinois, shall be made known in the premises, at the next term thereof, to be held in the city of Chicago, in said district.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Chicago, in the district [SEAL.] aforesaid, this tenth day of March, A. D. 1853, and of our independence the seventy-seventh year.

WM. POPE, *Cl'k.*

Upon which said writ of injunction the marshal endorsed—

"I hereby authorize and empower Samuel L. Baker to execute the within writ, this fourteenth day of March, A. D. 1853.

BEN. BOND, *U. S. marshal.*

And the said writ was, on the fourteenth day of March, 1853, filed in the said clerk's office, with the following return endorsed thereon, that is to say:

Served the within writ personally upon Peter J. Burchell, this 14th March, 1853. BEN. BOND, *U. S. marshal.*
S. L. BAKER, *Special deputy.*

And on the second day of April, A. D. 1853, the defendant, Peter J. Burchell, by Farnsworth and Ferguson and Collins, his solicitors, filed in the clerk's office of said court his answer to said bill, in the words following, that is to say;

Circuit court of the United States, for the district of Illinois.
Of the April term, A. D. 1853.

The answer of Peter J. Burchell to the bill of complaint of Stewart C. Marsh, Alexander Freer and William M. Arbuckle.

This defendant, now and at all times hereafter, saving and reserving unto himself all advantage and benefit of exception to the manifold insufficiencies and imperfections of the bill of complaint of the said complainants, for answer thereunto, or so much thereof as he is advised by his counsel it is necessary for him to make answer unto, admits that he purchased several bills of goods of the said Marsh & Freer, and at or about the times mentioned in said bill of complaint; but defendant avers that the amounts of said bills, except the two first mentioned, are not correctly stated in the said bill of complaint of the said complainants, but are much larger than the bills of said goods furnished this defendant by said Marsh & Freer.

And this defendant further answering says, that he did pay the said Marsh & Freer, from time to time prior to October, A. D. 1851, amounting in all to the sum of about two thousand five hundred and sixty-three dollars, which was more than the amount of the two first bills of merchandise purchased of them, and that he did pay the said Marsh & Freer, about the 18th day of October, A. D. 1851, the further sum of one thousand dollars upon said bills purchased as aforesaid.

And this defendant further answering admits, that he was sued by the said Marsh & Freer, as in the said bill alleged, at the spring term of this court, 1852, and that the said Marsh & Freer filed their declaration in said suit, counting upon accounts for bills of goods sold to said defendant; and he also admits that pleas were filed to said declaration, and an affidavit for continuance of said cause as in said bill of complaint alleged and set forth; and that upon the hearing of said motion to continue, founded upon said affidavit, the said Marsh & Freer, by their attorneys in said cause, admitted the facts set forth in said affidavit to be true, which was entered of record in said court, in the proceedings in said cause; and afterwards, at the same term of said court, the said cause was called for trial, whereupon a jury was waived by the parties, and the cause submitted to the court for trial, and the court having heard the evidence and arguments of counsel, intimated an opinion adverse to the said plaintiffs, Marsh & Freer; whereupon the said Marsh & Freer asked for and submitted to a nonsuit.

And this defendant further answering says, that said Marsh & Freer, through their agent and attorney, R. V. M. Cross, did, on the 18th day of May, A. D. 1852, file an affidavit, such as is required by law, and sue out a writ of capias ad respondendum against this defendant, which writ was made returnable as in said bill of complaint alleged, for the sum of twelve thousand dollars; and that this defendant was arrested upon and by virtue of said writ of capias, and soon after gave bail as in said bill alleged; also, that the parties to said suit pleaded to such action, and that the said Burchell appeared by his counsel at the said July term of said court, at Springfield, and filed an affidavit and made his motion to continue said suit, which motion was resisted by the said R. V. M. Cross, the attorney for said Marsh & Freer, but was sustained by the court, and a continuance ordered.

This defendant further answering admits, that he purchased a bill of goods of the said Alexander Freer & Co., William M. Arbuckle, (the firm of Alex. Freer & Co.,) about the eighteenth day of October, A. D. 1851, to the amount of about one thousand and fourteen dollars; but this defendant avers and insists that he purchased said goods upon a credit of one year, and not upon a credit of six months only, as is alleged in said bill.

And this defendant fur says, that the said Freer & Arbuckle, through their said agent and attorney, R. V. M. Cross, did, on the eighteenth day of May, A. D. 1852, (and at the same time that the said Marsh & Freer sued out the capias as is herein before mentioned,) also file a like affidavit, and sue out a like capias against this defendant for the sum of two thousand and fourteen dollars, which writ was returnable as is in said bill of complaint alleged; and that this defendant was immediately arrested thereon, as soon as he had given bail and been discharged from arrest on the capias, at the suit of Marsh & Freer, as before stated; that this defendant, as soon as he could, procured bail to the satisfaction of the marshal who arrested him, and was discharged from said last mentioned arrest.

And this defendant further answering admits, that the parties plead in said action of Freer & Arbuckle against this defendant, and that this defendant appeared, by his attorney and counsel, to said suit at Springfield, in the month of July, A. D. 1852, and filed an affidavit of this defendant, and moved the court thereon for a continuance of last said mentioned cause; and the same R. V. M. Cross appeared in said suit as the attorney of the said Freer and Arbuckle, and resisted such application for a continuance; but the court being fully advised, sustained said motion, and ordered said cause continued, which was entered of record.

And this defendant further answering says, that on the 22d day of October, in the year eighteen hundred and fifty-two, the said Alexander Freer, who was the partner in trade with the said Stewart C. Marsh, and who is also the partner of William M. Arbuckle aforesaid, the said Freer and Arbuckle being successors of the house of Marsh & Freer, came to St. Charles where the said Burchell resides; he, the said

Freer, representing both of said firms aforesaid, and then and therefore, and in behalf of said firms of Marsh & Freer and of Alex. Freer & Co., entered into a written submission with this defendant, therein agreeing to submit the subject-matter of the suits heretofore mentioned, and all manner of differences and claims and controversies between either or both of said firms and this said defendant, to the determination and award of C. A. Brooks, O. M. Butler, and such third person as they, the said Butler & Brooks, might select; and therein also agreeing that the said arbitrators should meet at St. Charles, on the first day of November, (then next,) for the hearing of the matters in difference between said parties. And the said C. A. Brooks and O. M. Butler afterwards agreed upon and selected Petro Sears as the third person to serve as arbitrator with them, and endorsed said selection upon said submission; (for a more full and perfect understanding of which submission and endorsement thereon, by said Brooks & Butler, reference may be had to a copy thereof, hereto attached, marked exhibit A, which this respondent makes a part of this answer.)

And this respondent further says, that he at great expense procured the attendance of witnesses and counsel, for the purpose of being ready for said hearing before said arbitrators, and was ready, and the said arbitrators met and organized, on the said first day of November, A. D. 1852, at St. Charles, for the purpose of said hearing; and the said Freer by his attorney in fact, Henry Frink, esq., by an instrument in writing, thereupon revoked the powers of said arbitrators to hear and determine said matters of difference.

And this defendant further answering admits, that on the 15th day of December, 1852, the parties entered into the submission mentioned in the bill of complaint of the said complainants, and this defendant believes that the said submission is correctly stated and set forth in said bill of complaint, and that the said Mosley and Butler selected William C. Kimball, of Elgin, in Kane county, as the third arbitrator; and he further says that bonds were executed by said parties to each other to abide and perform the award according to the conditions of said submission, only that the parties approved of said bonds instead of their being approved of by said arbitrators. And he further admits that the parties' attorneys were duly notified by said arbitrators of the time and place of meeting for the hearing of the matters submitted, and that the hearing took place at the time and place mentioned in said bill of complaint.

And this defendant further answering says, that the items and amounts of the purchases of goods by this defendant, of and from the *first* of Marsh & Freer, and the firm of John Freer & Co., were established and admitted by this defendant before said arbitrators to be as follows: Bills of goods purchased of Marsh & Freer, beginning with May, 1849, and last bill, October, 1850, amounting in all to about seven thousand three hundred and eighty-five dollars; amount of payments on the same prior to October, 1851, in all amounting to about two thousand five hundred sixty-three dollars; amount paid on the

same, October 18th, 1851, one thousand dollars. And said complainants made no proof before said arbitrators as to what time of credit said bills or either of them were purchased upon.

It was also conceded and admitted by this defendant that he purchased of Freer and Arbuckle, about the 18th October, 1851, a bill of goods amounting to about one thousand and fourteen dollars and twenty-one cents.

This defendant further answering denies, that it was conceded by him that the balance remaining unpaid and due to the said firm of Marsh & Freer, from him, was the sum of four thousand nine hundred and thirty dollars and upwards, including principal and interest.

And this defendant further answering admits, that it was claimed by this respondent's attorney, before said arbitrators, that this defendant had been wrongfully and maliciously sued by said Marsh & Freer, and wrongfully, maliciously, and falsely sued, arrested, and imprisoned and prosecuted by Marsh & Freer, and by Freer & Arbuckle, before their demands were due; and that they had wrongfully revoked the authority to arbitrate, as hereinbefore stated, whereby this respondent had been greatly damaged and injured; and this defendant thereupon did introduce as witnesses George Dickinson and George W. Gorton, both merchants, who testified substantially as follows, (and not in all respects as stated in said bill of complaint:) That they were present in the store of Alexander Freer & Wm. M. Arbuckle, about the seventeenth of October, eighteen hundred and fifty-one; that this defendant and one Hopkins, a merchant in the State of New York, were there at the same time; that they heard a conversation between this defendant and the complainant, Alexander Freer; that this defendant told the said Freer that he wished to buy a bill of goods of him (Freer) upon a year's credit; that he could buy goods at other houses in New York on a year, and would not buy on a less credit; and that this defendant could not pay them, Marsh & Freer, the balance of their bill until he (this defendant) came to New York the following season; that said Freer then asked this defendant when he would be down; that this defendant told him it would be when he got the money—perhaps in April, May, or June—but he would certainly pay it by July, and asked Freer if that would do. Freer replied that it would do, and said that that was perfectly satisfactory, and that he would sell this defendant what goods he wanted on a year's credit; that this defendant then said he would come into the store and pick out his goods the next morning. They said Dickinson and Gorton also testified that this defendant said to Freer in said conversation, that he (this defendant) wanted a full understanding and agreement with him (Freer) about the time of payment of said demand of Marsh & Freer, as he (this defendant) did not want their man Cross to be harassing him when he got home. Freer said that Cross should not trouble him.

And this defendant further answering says, that he then proved before said arbitrators the commencement and proceedings in the suit, the first hereinbefore mentioned, of Marsh & Freer against this defend-

Freer, representing both of said firms aforesaid, and then and therefore, and in behalf of said firms of Marsh & Freer and of Alex. Freer & Co., entered into a written submission with this defendant, therein agreeing to submit the subject-matter of the suits heretofore mentioned, and all manner of differences and claims and controversies between either or both of said firms and this said defendant, to the determination and award of C. A. Brooks, O. M. Butler, and such third person as they, the said Butler & Brooks, might select; and therein also agreeing that the said arbitrators should meet at St. Charles, on the first day of November, (then next,) for the hearing of the matters in difference between said parties. And the said C. A. Brooks and O. M. Butler afterwards agreed upon and selected Petro Sears as the third person to serve as arbitrator with them, and endorsed said selection upon said submission; (for a more full and perfect understanding of which submission and endorsement thereon, by said Brooks & Butler, reference may be had to a copy thereof, hereto attached, marked exhibit A, which this respondent makes a part of this answer.)

And this respondent further says, that he at great expense procured the attendance of witnesses and counsel, for the purpose of being ready for said hearing before said arbitrators, and was ready, and the said arbitrators met and organized, on the said first day of November, A. D. 1852, at St. Charles, for the purpose of said hearing; and the said Freer by his attorney in fact, Henry Frink, esq., by an instrument in writing, thereupon revoked the powers of said arbitrators to hear and determine said matters of difference.

And this defendant further answering admits, that on the 15th day of December, 1852, the parties entered into the submission mentioned in the bill of complaint of the said complainants, and this defendant believes that the said submission is correctly stated and set forth in said bill of complaint, and that the said Mosley and Butler selected William C. Kimball, of Elgin, in Kane county, as the third arbitrator; and he further says that bonds were executed by said parties to each other to abide and perform the award according to the conditions of said submission, only that the parties approved of said bonds instead of their being approved of by said arbitrators. And he further admits that the parties' attorneys were duly notified by said arbitrators of the time and place of meeting for the hearing of the matters submitted, and that the hearing took place at the time and place mentioned in said bill of complaint.

And this defendant further answering says, that the items and amounts of the purchases of goods by this defendant, of and from the *first* of Marsh & Freer, and the firm of John Freer & Co., were established and admitted by this defendant before said arbitrators to be as follows: Bills of goods purchased of Marsh & Freer, beginning with May, 1849, and last bill, October, 1850, amounting in all to about seven thousand three hundred and eighty-five dollars; amount of payments on the same prior to October, 1851, in all amounting to about two thousand five hundred sixty-three dollars; amount paid on the

same, October 18th, 1851, one thousand dollars. And said complainants made no proof before said arbitrators as to what time of credit said bills or either of them were purchased upon.

It was also conceded and admitted by this defendant that he purchased of Freer and Arbuckle, about the 18th October, 1851, a bill of goods amounting to about one thousand and fourteen dollars and twenty-one cents.

This defendant further answering denies, that it was conceded by him that the balance remaining unpaid and due to the said firm of Marsh & Freer, from him, was the sum of four thousand nine hundred and thirty dollars and upwards, including principal and interest.

And this defendant further answering admits, that it was claimed by this respondent's attorney, before said arbitrators, that this defendant had been wrongfully and maliciously sued by said Marsh & Freer, and wrongfully, maliciously, and falsely sued, arrested, and imprisoned and prosecuted by Marsh & Freer, and by Freer & Arbuckle, before their demands were due; and that they had wrongfully revoked the authority to arbitrate, as hereinbefore stated, whereby this respondent had been greatly damaged and injured; and this defendant thereupon did introduce as witnesses George Dickinson and George W. Gorton, both merchants, who testified substantially as follows, (and not in all respects as stated in said bill of complaint:) That they were present in the store of Alexander Freer & Wm. M. Arbuckle, about the seventeenth of October, eighteen hundred and fifty-one; that this defendant and one Hopkins, a merchant in the State of New York, were there at the same time; that they heard a conversation between this defendant and the complainant, Alexander Freer; that this defendant told the said Freer that he wished to buy a bill of goods of him (Freer) upon a year's credit; that he could buy goods at other houses in New York on a year, and would not buy on a less credit; and that this defendant could not pay them, Marsh & Freer, the balance of their bill until he (this defendant) came to New York the following season; that said Freer then asked this defendant when he would be down; that this defendant told him it would be when he got the money—perhaps in April, May, or June—but he would certainly pay it by July, and asked Freer if that would do. Freer replied that it would do, and said that that was perfectly satisfactory, and that he would sell this defendant what goods he wanted on a year's credit; that this defendant then said he would come into the store and pick out his goods the next morning. They said Dickinson and Gorton also testified that this defendant said to Freer in said conversation, that he (this defendant) wanted a full understanding and agreement with him (Freer) about the time of payment of said demand of Marsh & Freer, as he (this defendant) did not want their man Cross to be harassing him when he got home. Freer said that Cross should not trouble him.

And this defendant further answering says, that he then proved before said arbitrators the commencement and proceedings in the suit, the first hereinbefore mentioned, of Marsh & Freer against this defend-

ant, by a certified copy of the record thereof, as alleged in said bill, and also introduced and read in evidence a stipulation made by H. Frink, esq., the attorney of the said complainants, which was as follows:

"Before arbitrators, Stewart C. Marsh and Alexander Freer with Peter J. Burchell.

Also, Alexander Freer and Wm. Arbuckle with Peter J. Burchell.

It is hereby stipulated by the attorneys for the above named respective parties that the following facts be admitted on the hearing of the above, viz:

That the said Stewart C. Marsh & Alexander Freer caused a capias to be issued in their favor, against said Peter J. Burchell, on the 18th day of May, A. D. 1852, out of the circuit court of the United States, for the district of Illinois, in an action of trespass on the case, upon promises, for the sum of twelve thousand dollars, directed to the marshal of the district of Illinois, returnable on the first Monday of July, then next, at Springfield. That on the 19th day of May, A. D. 1852, said Burchell was arrested by virtue thereof, and gave bail to the marshal in the sum of twelve thousand dollars.

Also, that the said Alexander Freer and William M. Arbuckle caused a capias to be issued in their favor, against said Peter J. Burchell, on the 18th day of May, A. D. 1852, out of the circuit court of the United States, for the district of Illinois, in an action of trespass on the case, upon promises, for the sum of two thousand and fourteen dollars, directed to the marshal of the district of Illinois, returnable at the first Monday of July then next, at Springfield. That on the 19th day of May, A. D. 1852, said Burchell was arrested by virtue thereof, and gave bail to the marshal in the sum of two thousand and fourteen dollars.

(Signed) H. FRINK."

And this defendant further answering admits, that he proved before said arbitrators that the said Ralph V. M. Cross was the acting and general collecting agent of the said houses of Marsh & Freer and Freer & Arbuckle, and accredited by them as such during all the time from the first purchase of said goods down to that time; and also admits that he further proved that he was engaged in the business of a merchant, having a large store at St. Charles, and another small one at Cherry Valley, and was doing a good, safe, and profitable business up to the time he was sued and harassed by the said complainants as aforesaid.

And this respondent further says, that he further proved before said arbitrators, by Lewis N. Petroord, Adam Van Test, and Abel Walker, that some time in the month of March, A. D. 1852, they were present in the store of this defendant, in St. Charles, when the said R. V. M. Cross called upon this defendant and dunned him for Marsh & Freer; that this defendant told Cross he did not owe them any thing yet—that the debt was not then due; that Cross said to this defendant, By God, they must have the money or something that will get it immediately; that this defendant said to Cross, "I see by your actions that you are

bound to sue me, but if you do, it shall not be because you are afraid of losing your debt;" that he ought not to give him security, as it would injure him with his other creditors; but he had rather give security than be sued. Cross said he did not want security, he must have money; but said he would take a trust deed and judgment note due in thirty days; that this defendant said that would be sooner than the debt would be due, and that he (this defendant) did not want to give him any *snap* papers; but told Cross he would turn him out his stock of goods, or he would give him mortgage upon good real estate, or he might examine his books of account, notes, and mortgages, and he would secure him with them; for, he said, he would secure him five dollars for every one rather than be sued. But Cross said, Damn the security; I want money, and must have it. That Cross wanted this defendant to go back and talk in private; but that this defendant told him he was willing all the world should know what he said; he did not want to talk in private with him.

This defendant further answering says, that when the last aforementioned evidence was offered, the attorneys for said complainants stated that the said evidence might come in under objection, but did not object to its being given, nor call upon the arbitrators to make any decision in reference to the propriety of receiving it at all; nor did the complainants' attorney make any objection to the reception of any testimony whatever, except in the manner above mentioned—that the same might come in subject to exception.

And this defendant further answering admits, that he did further prove to said arbitrators that the said Cross, while acting for the said complainants, did make the statements, as alleged in said bill, with reference to this defendant, and did prove that the said Cross tried to prevent this defendant from getting bail when he was arrested, saying that if any one entered bail for him they would become liable for the debt by the rules of practice of the United States courts; and that said Cross also said he had sued out a "capias" against this defendant for amounts larger than the indebtedness, in order to prevent this defendant from procuring bail; also, that Cross, as the agent for said complainants, was with the officer when he went to arrest this defendant, and stated that the complainants had two capiases, so that if Burchell obtained bail upon one of them they would then take him upon the other.

This defendant further admits, that he proved, as stated in the bill, that he was a careful and prudent merchant, and did a safe business; and also admits that he called some six or eight merchants as witnesses, who testified they had heard all the evidence in the cause given; and taking that as a basis, they should estimate this defendant's damages by reason of the doings of the said complainants towards him, at about ten thousand dollars; the attorney for said complainants stating at the time that the same might come in subject to objection.

And this defendant further admits, that he proved the agreement to arbitrate herein before mentioned, and the revocation of the same, and all the facts in relation thereto, herein before stated in this answer.

And this defendant further answering admits, that the said complainant's attorney read to the arbitrators a copy of the affidavit made by this respondent, at the April term of the said circuit court, for a continuance of the cause of Marsh & Freer against him; which said affidavit was made in the month of April, A. D. 1852, and stated that the debt, by the terms of the agreement, would not be due before or until April, 1852.

This respondent also admits that he then proved, by J. F. Farnsworth, that he was employed as attorney by him, &c., and that he drew said affidavit; and that this respondent stated to his said attorney, when he instructed him to draw said affidavit, as charged in said bill, and stated to him at that time the agreement he had made with the said Freer to be as the same was testified to by the said Dickinson and Gorton, and that he drew the affidavit in that manner because this defendant might go down to New York before July, and if he did, the debt would become due, by the terms of the agreement, when he did so visit New York. Admits that he proved the employment of counsel to defend said suits, as in said bill set forth.

This respondent further answering admits, that the said complainants' attorney, in his argument before and to the said arbitrators, claimed and contended as set forth and alleged in the bill of complaint; while it was contended on the other hand, by this defendant's counsel, that the said complainants were responsible and liable for the acts of Cross while acting within the scope of his employment by them, and also that the said complainants had adopted his acts in the further prosecution of the suits which he wrongfully commenced, and by their admission in the case had said that they caused the suits to be commenced against this defendant; and that it was shown by the record of the proceeding in the said suit first commenced, that the said Marsh & Freer, even after admitting that their suit was commenced before the demand sued for was due, still pressed on the same and sought to recover it. This defendant admits that he, by his counsel, contended he had been greatly damaged and injured by the actings and doings of the said complainants towards him; and that he was entitled to large damages, as his business had been broken up—himself obliged to give up and sell out at a sacrifice.

This defendant, by his counsel, also contended, and this defendant still insists, that it was clearly proven that neither of said demands were due at the time of the commencement of either one of said suits.

This defendant further answering admits, that a majority of said arbitrators, after a full consultation of the three together, made and published the award, as the same is truly set forth in said bill of complaint; but this respondent does not know the reason why said Mosley did not sign the same. This defendant denies that the said arbitrators or either of them attempted to defraud the said complainants, or either of them; and if the attorney of the said complainants does not see the reason why the arbitrators made a distinction in the amount of damages which they found against the two houses and firms, it is not the fault of this defendant.

This defendant further answering denies, that the said arbitrators acted unjustly, or with partiality or ignorance, in making their award; but avers that they acted justly, fairly, and with a due and honest consideration of the rights of the parties; and that, in making their said award, they discharged their duty faithfully, according to the oath which they had taken; and denies that the said arbitrators made said award from improper and corrupt motives, with the design of favoring this defendant, or in utter ignorance of the rights of the parties to said submission, and of their duties and powers.

And this defendant avers that the said arbitrators had power and authority, by virtue of their office under the said submission, to award damages to any extent which they believed this defendant had sustained, to compensate him not only for the money which he had actually expended, but if he was falsely and maliciously sued and arrested, and his character, credit, and business injured by their doings towards him, to compensate him for the same, and to punish his assailants.

This defendant further answering avers, that a good and sufficient consideration was proved for the promise of the said Marsh & Freer to wait upon this defendant as they promised to do; and that the plea of the said complainants, (who were wholesale merchants, and men of great wealth,) that their said promise was but a "boy's bargain," and therefore they had a right to back out of the selling their customer more goods, is not a good one in this instance, as this defendant not only paid them one thousand dollars, but purchased a bill of goods of the said Freer & Arbuckle, as a consideration for said promise, if any was wanting.

And this defendant further says that any other matter or thing in the said bill of complaint contained which is material, and not herein answered unto, admitted, traversed, and denied, is not true.

P. J. BURCHELL.
FARNSWORTH & FERGUSON & COLLINS,
Solicitors.

STATE OF ILLINOIS,
County of Kane, ss.

Peter J. Burchell, the above named defendant, being sworn, on his oath says, that he has read the foregoing answer by him signed, and the matters and things therein contained are true in substance and in fact; and further saith not.

P. J. BURCHELL.

Sworn to and subscribed before me, this 30th day of March, A. D. 1853.
ALEX. H. BAIRD,
Justice of the peace.

STATE OF ILLINOIS,
Kane county, ss.

I, James Herrington, clerk of the county court, in and for said county, hereby certify that A. H. Baird was, on the 30th day of

March, A. D. 1853, an acting justice of the peace in and for said county, duly commissioned and sworn, and full faith and credit are due all his official acts as such justice of the peace.

In witness whereof I have hereunto set my name, and [SEAL.] the seal of said county court, this 30th day of March, A. D. 1853.

JAMES HERRINGTON, *Clerk.*

"*Exhibit A.*"

This article of submission, made and entered into this 22d day of October, in the year 1852, between Alexander Freer, for and behalf of the firms of Alexander Freer & Co. and Marsh & Freer, of the city of New York, and Peter J. Burchell, of St. Charles, Illinois, witnesseth: that whereas certain suits are now depending in the circuit court of the United States, in and for the district of Illinois, at Springfield, in one of which the said Freer and Stewart C. Marsh are plaintiffs, (the firm of Marsh & Freer,) and in the other the said Freer and William M. Arbuckle are plaintiffs, (the firm of Alex. Freer & Co.,) and in both of which the said Peter J. Burchell is defendant; which suits are brought to recover certain accounts which the said plaintiffs allege are due and owing from said Burchell to them; and whereas certain disputes have arisen between the parties aforesaid in reference thereto, now, therefore, the said parties, in order to forever settle and adjust all and all manner of disputes, claims, demands, existing between them, do hereby covenant and agree to submit the subject of said suits and all manner of differences between them, whether particularly mentioned or not, to the final arbitrament, determination, and award of Charles H. Brooks, Oliver M. Butler, and such other third person as the said Brooks and Butler may select, who is not of kin to and is indifferent between the parties. The said arbitrators to meet on Monday, the first day of November next, in the village of St. Charles, at such hour and place as they may select; hear the statements of the parties hereto, and such other testimony as the said parties may adduce with reference to the differences between them. The award of said arbitrators to be reduced to writing and signed by them, and a copy delivered to each of the parties hereto within three days from the making thereof.

And the parties hereto agree that the award of said arbitrators, so made as aforesaid, shall be final and conclusive between them as to all manner of differences now existing. And the said parties hereto also covenant and agree that they will well and truly abide by and perform the award of said arbitrators, so made as aforesaid, in all things.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

ALEX. FREER, [SEAL.]
P. J. BURCHELL, [SEAL.]

Attest—J. F. FARNSWORTH.

1301.

We, the undersigned arbitrators, do agree upon and select Peter Sears as the third person to be associated with us as arbitrators, in accordance with the annexed submission.

C. A. BROOKS,
O. M. BUTLER.

On the nineteenth day of April, A. D. 1853, the complainants, by H. Frink, their solicitor, filed in the clerk's office of said court their replication in the words following, that is to say:

U. S. CIRCUIT COURT,
District of Illinois.

In chancery.

The replication of Stewart C. Marsh, Alexander Frear, and William M. Arbuckle, to the answer of Peter J. Burchell, the defendant, to the bill of complaint exhibited against him by above named complainants.

These replicants, saving and reserving to themselves all benefit and advantage of exception which may be had, as taken to the manifold insufficiences of the said answer, for replication thereto say, that they will aver, maintain and prove their bill of complaint to be true; and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by these replicants, without that, that any matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied to, confessed and avoided, traversed or denied, is true; all of which matters and things these replicants are or will be ready to aver, maintain, and prove, as this court shall direct; and pray, as in and by their said bill of complaint they have already prayed.

H. FRINK, *Solicitor.*

And on the twenty-first day of April, A. D. 1853, the said complainants by their solicitor, H. Frink, filed in said clerk's office a motion in the words following, that is to say:

CIRCUIT COURT OF THE U. S.,
For the district of Illinois.

STEWART C. MARSH, Alexander Frear and William M. Arbuckle,
vs.
PETER J. BURCHELL.

The complainants, by H. Frink, their solicitor, move the court that an order be entered in this cause, directing an injunction to issue from this court restraining the defendant in all respects as prayed in the bill of complaint on file in this cause, and that such injunction be made perpetual.

H. FRINK,
Sol'r for complainants.

April 21, 1853.

And on the sixth day of May, of the April term of said court, in the year 1853, held at Chicago aforesaid, it was, among other things, ordered as follows:

ALEXANDER FREAR et als.
vs.
PETER J. BURCHELL.

This day came the parties by their solicitors, and the complainants, by leave of the court, having withdrawn their replication heretofore filed herein, the solicitors argued the motion heretofore filed herein to make the injunction granted in this case in vacation perpetual until the hour of adjournment, when it is ordered that the further argument thereof be postponed until 9 o'clock to-morrow morning.

And on the seventh day of May, the following order was entered:

ALEX. FREAR et als.
vs.
PETER J. BURCHELL.

This day came again the parties by their solicitors, and concluded their arguments herein, and the court not being sufficiently advised in the premises took time to consider; and on the thirteenth day of May, 1853, the final order of the court was made in the words following, that is to say:

STEWART C. MARSH, Alexander Frear and William M. Arbuckle,
vs.
PETER J. BURCHELL.

This cause having been brought to a hearing upon bill and answer, and the same having been submitted to this court, upon the argument of counsel for the parties, complainants and defendant, and the court having duly considered the matters stated and set forth in the bill of complaint, as well as the matters stated and alleged in the answer of the defendant, on motion of Henry Frink, solicitor of the complainants, it is ordered, adjudged and decreed by the court that the award made, signed and published on the fourth day of February, eighteen hundred and fifty-three, by Oliver M. Butler and William C. Kimball, two of the arbitrators chosen and selected by the complainants and defendant, in pursuance of an agreement of submission, executed by the complainants, by Henry Frink, their attorney in fact, and by the defendant in person, bearing date on the fifteenth day of December, eighteen hundred and fifty-two, as set forth in the bill of complaint, be, and the same is hereby in all things vacated, annulled and set aside; and it is further ordered, adjudged and decreed, that the said Peter J. Burchell absolutely refrain and desist from counting upon or in any manner pleading said award in any suit or proceeding in law or equity as between the

said complainants, Stewart C. Marsh and Alexander Frear and the said defendant, or as between the complainants, Alexander Frear and William M. Arbuckle, and the defendant Peter J. Burchell, and from setting up, assigning or in any way or manner attempting to enforce said award; and on like motion it is adjudged and decreed, that the complainants have and recover their costs, amounting to the sum of twenty-three dollars, in this cause from the said defendant, and that they have execution therefor. And thereupon the defendant gave notice of his intention to appeal to the Supreme Court, and tenders as his surety Charles K. Parks, of Kane county, Illinois, who is considered sufficient and approved by the court; and it is ordered that the said defendant enter into bail with the said surety to the said plaintiffs, conditioned according to law in the penal sum of eight hundred dollars.

Whereupon, the defendant, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and fifty-three, filed in the clerk's office of said circuit court of the United States at Chicago aforesaid, a bond, in accordance with the order of said court, in the words following, that is to say:

CIRCUIT COURT OF THE U. S. OF AMERICA,
District of Illinois.

STEWART C. MARSH, Alexander Frear and William M. Arbuckle,
vs.
PETER J. BURCHELL.
} In chancery.

Know all men by these presents, that we, Peter J. Burchell and Charles K. Parks, of St. Charles, in the State of Illinois, are held and firmly bound unto the above named Stewart C. Marsh, Alexander Frear and William M. Arbuckle, in the sum of eight hundred dollars, to be paid to the said appellees, Marsh, Frear and Arbuckle, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the eighteenth day of May, in the year of our Lord one thousand eight hundred and fifty-three: Whereas the above named appellant, Peter J. Burchell, has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the district of Illinois. Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation to be void, otherwise the same shall be and remain in full force and effect.

P. J. BURCHELL, [SEAL.]
CH. K. PARKS, [SEAL.]

Attest: J. F. FARNSWORTH.